

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:05-bk-17239-ABB
Chapter 7

MARILYN BYRD LINDSEY

Debtor.

ORDER

This matter came before the Court on the Debtor's Objection to Frivolous Proof of Claim and Request for Sanctions Against David A. Lindsey ("Objection")¹ and the Motion for Sanctions and Attorney's Fees for Violation of 11 U.S.C. Rule 9011 Against David A. Lindsey ("Motion")² filed by Marilyn By rd Lindsey, the Debtor herein ("Debtor") against David A. Lindsey herein ("Lindsey"). An evidentiary hearing was held on November 14, 2006, at which the Debtor, counsel for the Debtor, and Lindsey, *pro se*, appeared. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises.

FINDINGS OF FACT

The Debtor filed this Chapter 7 bankruptcy case on October 16, 2005 ("Petition Date"). Lindsey filed a proof of claim (Claim No. 2) on November 4, 2005 in the amount of ten million two hundred and fifty thousand dollars (\$10,250,000.00), a ten million dollar unsecured claim and a two hundred and fifty thousand dollar secured claim. Lindsey asserts the claim arises from "alleged felony domestic violence while possessing [*sic*] and abusing amphetimines [*sic*], defamation [*sic*], fraud, intentional affliction of emotional distress by Debtor on this disabled double leg amputee."³

The Debtor did not list Lindsey as a creditor. She filed the Objection to Lindsey's proof of claim on December 6, 2005. The Debtor asserts the claim is frivolous and filed for purposes of harassment, and she simultaneously filed the Motion seeking sanctions against Lindsey. Lindsey subsequently

filed Creditor's Opposition To Debtor's Motion For Sanctions Against David A. Lindsey Under Rule 9011 ("Response")⁴ on December 14, 2005 asserting his claims arise from prepetition claims, extant actions, and potential causes of action.

Lindsey has not established his right to payment from the Debtor. His claim is unsubstantiated and has added to the litigiousness of this case. He does not have a claim against the Debtor or the Debtor's estate and therefore does not qualify as a creditor. The Debtor's Objection is sustained and Claim No. 2 is disallowed. The Debtor has not established Lindsey's actions warrant sanctions. This case stems from state court domestic relations litigation and hopefully will return to the proper forum as these matters are resolved. Her Motion is due to be denied.

CONCLUSIONS OF LAW

The term "claim" means right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. 11 U.S.C. § 101 (2005). An allowed claim is defined as:

A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

11 U.S.C. § 502(a). Lindsey filed his claim pursuant to § 501. The court, after notice and hearing, shall determine the amount of such claim and shall allow such claim in such amount, except to the extent that such claim is unenforceable against the debtor and property of the debtor. Id.

Lindsey does not have a valid claim against the Debtor or the Debtor's estate as he has not confirmed owning a right to payment. He does not qualify as a creditor because his claim is unfounded and unsubstantiated. The Debtor's Objection is sustained and Claim No. 2 is disallowed.

Fed. R. Bankr. P. 9011 provides for the imposition of an appropriate sanction, including attorneys' fees, in the event the Rule is violated. Fed. R. Civ. P. 9011 (2005). The Parties went through a

¹ Doc. No. 18.

² Doc. No. 19.

³ Claim No. 2.

⁴ Doc. No. 27.

divorce and the bankruptcy case has been litigious, but sanctions are not appropriate. The Debtor's Motion is due to be denied. The crux of this case arises from domestic relation issues between the parties and will hopefully return to the proper forum upon this resolution.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Objection to Claim No. 2 is hereby **SUSTAINED**; and it is further

ORDERED, ADJUDGED and DECREED that Lindsey's Claim No. 2 is hereby **DISALLOWED**; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Motion for Sanctions is hereby **DENIED**.

Dated this 14th day of December, 2006.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge